

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LORENZO CRENSHAW,

No. C 08-05161 CRB

Plaintiff,

ORDER

v.

CITY OF OAKLAND, et al.,

Defendants.

Now pending before the Court is defendants' motion to dismiss the First Amended Complaint. After carefully considering the submissions of the parties, the Court concludes that oral argument is unnecessary, and denies the motion to dismiss in part and grants the motion in part with leave to amend as is set forth below.

Defendants' motion to dismiss the Monell claim is granted with leave to file a Second Amended Complaint which contains allegations that pertain to this lawsuit.

Defendants' motion to dismiss the equal protection claim is granted as plaintiff has failed to allege that he has been intentionally treated differently from others similarly situated, that is, any discriminatory animus. See Engquist v. Oregon Dept. of Agriculture, 478 F.3d 985, 993 (9th Cir. 2007); Lee v. City and County and Los Angeles, 250 F.3d 668, 687 (9th Cir. 2001). As it is not apparent that amendment would be futile, plaintiff is granted leave to amend the equal protection allegation.

1 Defendants' motion to dismiss the due process claim is granted in light of plaintiff's
2 concession that the claim was previously dismissed without leave to amend.

3 Defendants' motion to dismiss the DOE defendants is denied. See Gillespie v.
4 Civiletti, 629 F.2d 637, 642 (9th Cir. 1980) ("situations arise, such as the present, where the
5 identity of alleged defendants will not be known prior to the filing of a complaint. In such
6 circumstances, the plaintiff should be given an opportunity through discovery to identify the
7 unknown defendants, unless it is clear that discovery would not uncover the identities, or that
8 the complaint would be dismissed on other grounds").

9 Plaintiff shall file his Second Amended Complaint within 20 days of the date of this
10 Order.

11 **IT IS SO ORDERED.**

12 Dated: April 24, 2009



13 CHARLES R. BREYER
14 UNITED STATES DISTRICT JUDGE
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